

HOAs: The Top 10 Things You Should Know

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1. What Are Governing Documents and What Role Do They Play?

- Declaration
- Articles of Incorporation
- Bylaws
- Plats
- Rules and Regulations



2. Are You Subject to the POA Act or the Condominium Act?

- Condominium Act
- POA Act
 - *Declaration*
 - *Mandatory assessment authority*
 - *Obligation to maintain or operate common area*
 - *Created after January 1, 1959*
- Can still have an HOA even if not subject to the POA Act



3. What is the Common Interest Community Board? Are You Registered? Should You Be?

- *Generally any Association subject to the Condo Act or POA Act should be registered*
 - *Exception for commercial condos*
- *Required to have CICB Complaint Policy in place*
- *Must renew registration every year*
- *To check registration:*
<http://www.dpor.virginia.gov/Boards/CIC-Board/>



4. Are You Incorporated? Should You Be?

- Condo v. HOA
- Benefits of incorporation
- How to know if you are incorporated
<http://www.scc.virginia.gov/clk/bussrch.aspx>
- How to obtain/maintain corporate status
 - *Articles of Incorporation/Bylaws*
 - *Annual renewal requirement*



5. How Should Decisions Be Made?

- Decisions by members v. decisions by Board
- Member Meetings
- Board/Committee Meetings
 - *Open meeting requirements*
 - *Notice requirements*
- Non-Stock Corporation Act
- Governing Documents



6. What Is A Reserve Study? Does Your Association Need One?

- Study of major items association is responsible for repairing/replacing
- Condo/POA Act requirements
- Professional v. volunteer
- How to use information obtained
- Updating prior studies



7. What Is Fair Housing Law? Does It Apply To You?

- Prohibits discrimination in the housing context on the basis of race, color, national origin, religion, sex, familial status or handicap.
- Applies to HOAs/condos.
- Impact on association covenants, rules and policies.
- **Be careful! If in doubt talk to a lawyer.**



8. Are There Limits To The Rules and Regulations Your Association Can Adopt?

- Must be reasonable and must be related to the Association's purpose.
- Must be based on rulemaking authority granted by law or governing documents.
- Must be consistent with covenants/declaration and law.
 - *Can be trumped by law.*
 - *Examples: group homes, satellite dishes, Fair Housing.*



9. If the Board doesn't agree with a covenant or restriction can it ignore it or refuse to enforce it?

- No – Board is obligated to enforce covenants.
- Owner could sue Board
 - *Board members may be liable for failure to enforce.*
- Can use business judgment in enforcement.
 - *Obligation to take enforcement action and treat owners consistently but can use business judgment to decide whether to take to court or how far to push an issue.*
- If don't think a covenant should be enforced seek to amend governing documents to eliminate.



10. Do You Have Adequate Insurance Coverage?

- Work with an insurance agent
- Property coverage
 - *Check governing documents for specific requirements*
 - *Generally any property owned by Association but can vary based on requirements of governing documents (i.e. condo policies often include the whole building including units).*
- Liability policy
 - *General Liability (monetary and non-monetary claims)*
 - *Directors and Officers (D&O) Coverage*
- Fidelity bond/employee dishonesty policy
 - *Required by Condo Act and POA Act*
 - *To protect against embezzlement*



QUESTIONS?



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